

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL).

March 5, 2002

Dear Xxxxx:

This letter is in response to your letter dated December 20, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Based on our recent phone conversation, this letter is to request a General Information Letter on the sales tax requirement for the tournament kits that the COMPANY sells to its members annually.

COMPANY has been paying sales tax for several years based on the material costs of the kits (basically paper and ink, not labor on printing jobs). The COMPANY changed management companies last year, and we want to verify the Department of Revenue requirements.

The tournament kits (dart, men's pool, women's pool) are sold to COMPANY members only. The members run the tournaments in locations where they have pool tables and electronic dart games placed, under contract, (taverns, restaurants, game rooms). The qualifying pool tournaments run for 9 consecutive weeks and qualify one winner for the state finals. The qualifying dart tournaments have 9 events and qualify 2 winners for each event (2 teams for doubles events).

An electronic golf tournament kit has been sold in recent years. However, the disappointing participation has forced a major change. A website provider will be handling the qualifying tournaments this year, with qualifiers eligible for the state finals which will again be held in conjunction with the dart and pool finals.

The kits are made up of information pages, sign-up sheets, hotel forms, finals schedules, rules and reminders, qualifier list forms, winner certificates, posters, and bracket sheets, etc. The purpose of the tournament is to help members gain more play on their pool tables and electronic dart games, which in turn helps their companies thrive.

I did find a 'Certificate of Registration' from the Illinois Department of Revenue. I have never used this before. COMPANY does pay sales tax on items it purchases. I would like clarification on how and when this 'Certificate of Registration' should be utilized.

Again, COMPANY sells the tournament kits only to members in good standing, not to locations. Your help on getting an answer to the sales tax question will be greatly appreciated. We are just now receiving orders for the kits and will wait to invoice until we receive your determination.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2000, which is the regulation for "Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers." As a general rule, when products are items of general utility and serve substantially the same function as stock or standard items, the products will be subject to the Retailers' Occupation Tax when sold. Items which serve substantially the same function are those which, when produced on special order, could be sold as produced to someone other than the original purchaser at substantially the same price.

Items that would not be considered stock or standard items and would not be sold to someone other than the purchaser for substantially the same price would not be subject to Retailers' Occupation Tax when sold, but would be subject to the Service Occupation Tax. Special order or custom print items are generally not considered stock or standard items and are generally not sold to someone other than the purchaser for substantially the same price. Therefore special order or custom print items are generally subject to the Service Occupation Tax.

From the limited details contained within your letter, it appears that the items you purchase are custom print items. The printer that you purchase the items from is subject to the Service Occupation Tax.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Generally, special order printers calculate their tax base utilizing either the third or fourth method. The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the

Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

It appears that you may be involved in a multi-service situation where you sell the custom print items that another serviceman produces for you. In multi-service situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301, enclosed. When both primary servicemen and secondary servicemen are registered, primary servicemen may give a Certificate of Resale to registered secondary servicemen for any tangible personal property purchased. Primary servicemen could then collect Service Use Tax from their customers based upon the separately stated selling price of the property or 50% of the bill to the service customers. If primary servicemen are registered and de minimis, they may choose to remit Service Occupation Tax to the Department based upon their cost price of tangible personal property purchased from the secondary serviceman. If the cost price of the tangible personal property is not separately stated by the secondary serviceman, the cost price will be deemed to be 50% of the total bill from the secondary serviceman. Primary servicemen provide the secondary servicemen with Certificates of Resale if the secondary servicemen are registered.

Public Act 89-675, effective August 14, 1996, states that if an unregistered de minimis serviceman subcontracts service work to an unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis

Associate Counsel

MAJ:msk
Enc.